

SENATE BILL No. 24

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-36-10; IC 35-50-2.

Synopsis: Death penalty and mental illness. Establishes a procedure to determine whether a defendant charged with murder is a mentally ill individual, and prohibits the imposition of life imprisonment without parole or the death penalty on a defendant found to be a mentally ill individual.

Effective: July 1, 2007.

Bowser

January 8, 2007, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.

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First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

SENATE BILL No. 24

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 35-36-10 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2007]:

4 **Chapter 10. Pretrial Determination of Mental Illness in Death**
5 **Sentence Cases**

6 **Sec. 1. This chapter applies when a defendant is charged with a**
7 **murder for which the state seeks a death sentence under**
8 **IC 35-50-2-9.**

9 **Sec. 2. (a) As used in this chapter, "mentally ill individual"**
10 **means an individual who, at the time of the offense, had a severe**
11 **mental disorder or disability that significantly impaired the**
12 **individual's capacity to:**

- 13 (1) **appreciate the nature, consequences, or wrongfulness of**
14 **the individual's conduct;**
15 (2) **exercise rational judgment in relation to the individual's**
16 **conduct; or**
17 (3) **conform the individual's conduct to the requirements of**



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the law.

(b) The term does not include a disorder manifested primarily by repeated criminal conduct or attributable solely to the acute effects of alcohol or other drugs.

Sec. 3. (a) A defendant may file a petition alleging that the defendant is a mentally ill individual.

(b) The petition must be filed not later than twenty (20) days before the omnibus date.

(c) If a defendant files a petition under this section, the court shall order an evaluation of the defendant to provide evidence of whether the defendant is a mentally ill individual.

Sec. 4. (a) The court shall conduct a hearing on a petition filed under this chapter.

(b) The court may determine that the defendant is a mentally ill individual only if the defendant proves at the hearing by clear and convincing evidence that the defendant is a mentally ill individual.

Sec. 5. Not later than ten (10) days before the initial trial date, the court shall determine whether the defendant is a mentally ill individual based on the evidence presented at the hearing under section 4 of this chapter. The court shall issue written findings supporting the court's determination under this section.

Sec. 6. If the court determines that the defendant is a mentally ill individual under section 5 of this chapter, the part of the state's charging instrument filed under IC 35-50-2-9 that seeks a death sentence against the defendant shall be dismissed.

Sec. 7. If a defendant is:

- (1) determined by the court to be a mentally ill individual under this chapter; and
- (2) convicted of murder

the court shall sentence the defendant under IC 35-50-2-3(a).

SECTION 2. IC 35-50-2-3, AS AMENDED BY P.L.71-2005, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3. (a) A person who commits murder shall be imprisoned for a fixed term of between forty-five (45) and sixty-five (65) years, with the advisory sentence being fifty-five (55) years. In addition, the person may be fined not more than ten thousand dollars (\$10,000).

(b) Notwithstanding subsection (a), a person who was:

- (1) at least eighteen (18) years of age at the time the murder was committed may be sentenced to:
 - (A) death; or
 - (B) life imprisonment without parole; and

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(2) at least sixteen (16) years of age but less than eighteen (18) years of age at the time the murder was committed may be sentenced to life imprisonment without parole; under section 9 of this chapter unless a court determines under IC 35-36-9 that the person is a mentally retarded individual **or a court determines under IC 35-36-10 that the person is a mentally ill individual.**

SECTION 3. IC 35-50-2-9, AS AMENDED BY P.L.1-2006, SECTION 550, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 9. (a) The state may seek either a death sentence or a sentence of life imprisonment without parole for murder by alleging, on a page separate from the rest of the charging instrument, the existence of at least one (1) of the aggravating circumstances listed in subsection (b). In the sentencing hearing after a person is convicted of murder, the state must prove beyond a reasonable doubt the existence of at least one (1) of the aggravating circumstances alleged. However, the state may not proceed against a defendant under this section if a court determines at a pretrial hearing under:

(1) IC 35-36-9 that the defendant is a mentally retarded individual; **or**

(2) IC 35-36-10 that the defendant is a mentally ill individual.

(b) The aggravating circumstances are as follows:

(1) The defendant committed the murder by intentionally killing the victim while committing or attempting to commit any of the following:

(A) Arson (IC 35-43-1-1).

(B) Burglary (IC 35-43-2-1).

(C) Child molesting (IC 35-42-4-3).

(D) Criminal deviate conduct (IC 35-42-4-2).

(E) Kidnapping (IC 35-42-3-2).

(F) Rape (IC 35-42-4-1).

(G) Robbery (IC 35-42-5-1).

(H) Carjacking (IC 35-42-5-2).

(I) Criminal gang activity (IC 35-45-9-3).

(J) Dealing in cocaine or a narcotic drug (IC 35-48-4-1).

(2) The defendant committed the murder by the unlawful detonation of an explosive with intent to injure person or damage property.

(3) The defendant committed the murder by lying in wait.

(4) The defendant who committed the murder was hired to kill.

(5) The defendant committed the murder by hiring another person

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to kill.

(6) The victim of the murder was a corrections employee, probation officer, parole officer, community corrections worker, home detention officer, ~~fireman~~, **firefighter**, judge, or law enforcement officer, and either:

(A) the victim was acting in the course of duty; or

(B) the murder was motivated by an act the victim performed while acting in the course of duty.

(7) The defendant has been convicted of another murder.

(8) The defendant has committed another murder, at any time, regardless of whether the defendant has been convicted of that other murder.

(9) The defendant was:

(A) under the custody of the department of correction;

(B) under the custody of a county sheriff;

(C) on probation after receiving a sentence for the commission of a felony; or

(D) on parole;

at the time the murder was committed.

(10) The defendant dismembered the victim.

(11) The defendant burned, mutilated, or tortured the victim while the victim was alive.

(12) The victim of the murder was less than twelve (12) years of age.

(13) The victim was a victim of any of the following offenses for which the defendant was convicted:

(A) Battery as a Class D felony or as a Class C felony under IC 35-42-2-1.

(B) Kidnapping (IC 35-42-3-2).

(C) Criminal confinement (IC 35-42-3-3).

(D) A sex crime under IC 35-42-4.

(14) The victim of the murder was listed by the state or known by the defendant to be a witness against the defendant and the defendant committed the murder with the intent to prevent the person from testifying.

(15) The defendant committed the murder by intentionally discharging a firearm (as defined in IC 35-47-1-5):

(A) into an inhabited dwelling; or

(B) from a vehicle.

(16) The victim of the murder was pregnant and the murder resulted in the intentional killing of a fetus that has attained viability (as defined in IC 16-18-2-365).

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(c) The mitigating circumstances that may be considered under this section are as follows:

(1) The defendant has no significant history of prior criminal conduct.

(2) The defendant was under the influence of extreme mental or emotional disturbance when the murder was committed.

(3) The victim was a participant in or consented to the defendant's conduct.

(4) The defendant was an accomplice in a murder committed by another person, and the defendant's participation was relatively minor.

(5) The defendant acted under the substantial domination of another person.

(6) The defendant's capacity to appreciate the criminality of the defendant's conduct or to conform that conduct to the requirements of law was substantially impaired as a result of mental disease or defect or of intoxication.

(7) The defendant was less than eighteen (18) years of age at the time the murder was committed.

(8) Any other circumstances appropriate for consideration.

(d) If the defendant was convicted of murder in a jury trial, the jury shall reconvene for the sentencing hearing. If the trial was to the court, or the judgment was entered on a guilty plea, the court alone shall conduct the sentencing hearing. The jury or the court may consider all the evidence introduced at the trial stage of the proceedings, together with new evidence presented at the sentencing hearing. The court shall instruct the jury concerning the statutory penalties for murder and any other offenses for which the defendant was convicted, the potential for consecutive or concurrent sentencing, and the availability of good time credit and clemency. The court shall instruct the jury that, in order for the jury to recommend to the court that the death penalty or life imprisonment without parole should be imposed, the jury must find at least one (1) aggravating circumstance beyond a reasonable doubt as described in subsection (l) and shall provide a special verdict form for each aggravating circumstance alleged. The defendant may present any additional evidence relevant to:

(1) the aggravating circumstances alleged; or

(2) any of the mitigating circumstances listed in subsection (c).

(e) For a defendant sentenced after June 30, 2002, except as provided by IC 35-36-9 **or IC 35-36-10**, if the hearing is by jury, the jury shall recommend to the court whether the death penalty or life imprisonment without parole, or neither, should be imposed. The jury

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1 may recommend:

2 (1) the death penalty; or

3 (2) life imprisonment without parole;

4 only if it makes the findings described in subsection (l). If the jury

5 reaches a sentencing recommendation, the court shall sentence the

6 defendant accordingly. After a court pronounces sentence, a

7 representative of the victim's family and friends may present a

8 statement regarding the impact of the crime on family and friends. The

9 impact statement may be submitted in writing or given orally by the

10 representative. The statement shall be given in the presence of the

11 defendant.

12 (f) If a jury is unable to agree on a sentence recommendation after

13 reasonable deliberations, the court shall discharge the jury and proceed

14 as if the hearing had been to the court alone.

15 (g) If the hearing is to the court alone, except as provided by

16 IC 35-36-9 or IC 35-36-10, the court shall:

17 (1) sentence the defendant to death; or

18 (2) impose a term of life imprisonment without parole;

19 only if it makes the findings described in subsection (l).

20 (h) If a court sentences a defendant to death, the court shall order

21 the defendant's execution to be carried out not later than one (1) year

22 and one (1) day after the date the defendant was convicted. The

23 supreme court has exclusive jurisdiction to stay the execution of a

24 death sentence. If the supreme court stays the execution of a death

25 sentence, the supreme court shall order a new date for the defendant's

26 execution.

27 (i) If a person sentenced to death by a court files a petition for

28 post-conviction relief, the court, not later than ninety (90) days after the

29 date the petition is filed, shall set a date to hold a hearing to consider

30 the petition. If a court does not, within the ninety (90) day period, set

31 the date to hold the hearing to consider the petition, the court's failure

32 to set the hearing date is not a basis for additional post-conviction

33 relief. The attorney general shall answer the petition for post-conviction

34 relief on behalf of the state. At the request of the attorney general, a

35 prosecuting attorney shall assist the attorney general. The court shall

36 enter written findings of fact and conclusions of law concerning the

37 petition not later than ninety (90) days after the date the hearing

38 concludes. However, if the court determines that the petition is without

39 merit, the court may dismiss the petition within ninety (90) days

40 without conducting a hearing under this subsection.

41 (j) A death sentence is subject to automatic review by the supreme

42 court. The review, which shall be heard under rules adopted by the

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supreme court, shall be given priority over all other cases. The supreme court's review must take into consideration all claims that the:

(1) conviction or sentence was in violation of the:

(A) Constitution of the State of Indiana; or

(B) Constitution of the United States;

(2) sentencing court was without jurisdiction to impose a sentence; and

(3) sentence:

(A) exceeds the maximum sentence authorized by law; or

(B) is otherwise erroneous.

If the supreme court cannot complete its review by the date set by the sentencing court for the defendant's execution under subsection (h), the supreme court shall stay the execution of the death sentence and set a new date to carry out the defendant's execution.

(k) A person who has been sentenced to death and who has completed state post-conviction review proceedings may file a written petition with the supreme court seeking to present new evidence challenging the person's guilt or the appropriateness of the death sentence if the person serves notice on the attorney general. The supreme court shall determine, with or without a hearing, whether the person has presented previously undiscovered evidence that undermines confidence in the conviction or the death sentence. If necessary, the supreme court may remand the case to the trial court for an evidentiary hearing to consider the new evidence and its effect on the person's conviction and death sentence. The supreme court may not make a determination in the person's favor nor make a decision to remand the case to the trial court for an evidentiary hearing without first providing the attorney general with an opportunity to be heard on the matter.

(l) Before a sentence may be imposed under this section, the jury, in a proceeding under subsection (e), or the court, in a proceeding under subsection (g), must find that:

(1) the state has proved beyond a reasonable doubt that at least one (1) of the aggravating circumstances listed in subsection (b) exists; and

(2) any mitigating circumstances that exist are outweighed by the aggravating circumstance or circumstances.

SECTION 4. [EFFECTIVE JULY 1, 2007] IC 35-36-10, as added by this act, and IC 35-50-2-3 and IC 35-50-2-9, both as amended by this act, apply only to crimes committed after June 30, 2007.

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